Petition

81-2181

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ALEXANDER L. STEVAS,
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NO. _____

WADE S. ANDREWS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION:
Amendment XIV - Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE:
Title 18, Section 1343

Whoever, having devised or intending to devise any scheme or money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1000 or imprisoned not more than five years, or both.

Title 18, Section 2314

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more.. Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

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NO._____

WADE S. ANDREWS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

The Petitioner, Wade S. Andrews, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit, entered in

this proceeding on February 8, 1982, Petition for Rehearing denied on April 20, 1982.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is reproduced herein as Appendix A to this Petition, post, pages A-1, et seq.

No written opinion accompanied the Per Curiam denial of the timely Petition for Rehearing. The table entry of that ruling has not yet been reported in the Federal Reporter and is not published officially. It is, however, reproduced in Appendix B to this Petition, post, page A-14.

There were no formal written opinions from the United States District Court for the District of Utah, Central Division, relevent to this Petition.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment undertaken for review was rendered on February 8, 1982. (Appendix A, infra, pages A-1, et seq.)

A timely Petition for Rehearing was denied on April 20, 1982. (Appendix B infra, page A-14).

A Petition for Recall and Stay of Mandate was submitted to the United States Court of Appeals for the Tenth Circuit on May 14, 1982 and is pending as of the instant date. (Appendix C, post, pages A-15, et seq).

The question presented for review herein was raised in the Court below as indicated in the Statement of the Case, infra.

Jurisdiction to review the judgment below is vested by and invoked pursuant to the provisions of Title 28, United States Code, Section 1254(1).

STATEMENT OF THE CASE

Petitioner Wade S. Andrews was indicted on four counts of wire fraud in violation of Title 18, United States Code, Section 1343, and one count of inducing the interstate transportation of a person in execution of a scheme to defraud in violation of Title 18, United States Code, Section 2314.

Two separate but closely interwoven issues are presented in this Petition. They are, however, set out under a single heading because of their similarity.

A. The Evidence Introduced at Trial was not Sufficient to Support a Conviction Under Either 18 USC 1343 or 18 USC 2314. It was alleged that Petitioner devised a scheme to defraud arising out of two transactions related to the selling, buying and trading of crude oil.

Petitioner was contacted by a business associate of Complainant herein and asked to canvas oil companies in the Abilene, Texas area for the purpose of securing a buyer for 50,000 barrels of foreign crude oil on a daily volume basis. Petitioner complied and notified his solicitor that a local company, CPI, had agreed to discuss such purchase.

Thereupon, Complainant, together with his business associate and an attorney, traveled to Abilene, Texas, the home of Petitioner, where he met Petitioner. Complainant advised Petitioner, and other Abilene businessmen, that he had substantial experience in buying, selling and trading oil and oil derivative products. He further represented that, in addition to dealing in oil, he had interests in a

refinery which processed crude oil. Based upon the foregoing warranties, Petitioner arranged a meeting between Complainant and Mr. James Spencer, a Vice president of CPI. In Complainant's presence a commission agreement was concluded between CPI and Petitioner, and other parties of interest, relating to the proposed crude sale from Complainant to CPI. CPI agreed to purchase the foregoing amount of foreign crude oil, contingent only upon Complainant providing verification of title and shipping date. An agreement was concluded between CPI and Complainant which failed for reason of Complainant's failure to perform. Petitioner subsequently introduced Complainant to the president of an Abilene bank for the purpose of verifying the financial

capacity of CPI to perform.

The foregoing, while not part of the alleged violation behavior, is germane for two reasons:

1. The warranties and representations described above induced Petitioner to expand his dealings with Complainant, whom he had not met prior to the above, and;

2. The procedures described are illustrative of the function of a broker in the oil sales and trading business. The sole function, unless otherwise specified and agreed by interested parties, is to bring capable principals together. Having so done, in conformity with the prior requirements of each, he has performed in full and is entitled to his agreed remuneration.

The Court below failed to properly

differentiate the above described transaction from the following alleged offense behavior and, thereby, clouded the issues before it

Shortly thereafter, Complainant contacted Petitioner and requested him to locate a source from which Complainant could secure 50,000 barrels of "old" domestic crude oil on a daily allocation. Although the Court below concluded that Petitioner was an "oil broker" and, therefore, presumably expert in the systems and procedures attendant to oil transactions, such is not the case. Because his expertise is not in this sector of business, Petitioner took two immediate steps:

1. He contacted the United States Department of Energy to inform himself of the necessary rules and regulations

surrounding such a transaction.

Here he learned that "old" domestic crude oil cannot be purchased outright. It must be replaced, on a formula basis within a specified period of time, with "new" crude oil.

Therefore, a sale of "old" crude oil is in reality, no matter the terminology employed, a trade of one oil for another, and;

2. Petitioner contacted an experienced oil industry person, Vernon Singleton, and enlisted his aid in complying with Complainant's requirements. Mr. Singleton was skeptical and suggested that Petitioner test Complainant's credibility and intentions by requiring a "good faith" advance. Petitioner contacted Complainant and advised him of this

requirement together with the requirements of the Department of Energy. Complainant indicated he was aware of the propriety of the former demand and the necessity to replace "old" domestic crude oil as required by the DOE.

Petitioner and Complainant had entered into a verbal agreement that, for the service of placing Complainant face-to-face with a qualified and competent source and seller of 50,000 barrels of "old" crude oil daily, Petitioner would be due a commission of one hundred thousand dollars ($100,000.00) and a royalty override, on a continuing basis, for each barrel of oil so transferred. Petitioner, from his conversations with Mr. Singleton was aware he must allocate one-half of the total lump sum commission, fifty thousand dollars

($50,000.00), to Singleton and his asociates for their services in arranging contact with a qualified supplier. Therefore, Petitioner requested fifty thousand dollars ($50,000.00), his unidivided share of the total agreed lump sum commission, as the "good faith" payment from Complainant.

Complainant represented that his banker was included in the financing arrangements and asked Petitioner to explain the reason for the front-end payment to him. Petitioner complied. Complainant and his banker represented that for capital and accounting reasons the payment would be split into two equal segments; so, initially, a payment of twenty-five thousand dollars ($25,000.00) was forwarded to Petitioner. Approximately one week later the balance

was paid.

Complainant requested, to satisfy the requirements of his accountants, that Petitioner wire a covering document relating to the money transfers and refer to same as a "loan" and indicate that he would hold funds pending events which were not part of the base agreement.

At the time of the first transfer of money, and thereafter, Petitioner was in possession of firm confirmation from Mr. Singleton that firm commitments were in hand which would place Complainant in contact with a qualified supplier -- in this instance, Coastal States Crude Gathering Corporation, Houston, Texas, one of the largest suppliers in the world. Therefore, Petitioner complied with the request for specific language in the wire transmission for the reason he

was certain of his ability to perform as agreed with Complainant.

Later, Complainant further required that he be placed with a qualified supplier not later than October 12, 1979. Petitioner fully complied.

Complainant traveled to Houston, Texas, there met Petitioner, signed a further commission agreement relating to the remaining portion of the lump sum commission of one hundred thousand dollars ($100,000.00) and then met with officials of Coastal States.

At that meeting Complainant made material representations, all consonant with those prior made to Petitioner and other individuals which related to his resources and ability to perform according to his soliciting agreement.

Though officials of Coastal States

were extremely skeptical of Complainant's ability to perform they agreed to supply him the oil requested in the amount specified and according to his terms with the single requirement that he provide written verification of his ability to perform in accord with industry standards.

Complainant did not, on October 12, 1979 or on any other date between September 20, 1979 and that date, possess the capability of performance of any contractural agreement into which he entered.

Petitioner and his associates drawn into the agreements with Complainant performed completely in every essential aspect and in accord with all accepted standards in the oil trading and selling business. Complainant, on the other

hand, continually misrepresented his ability to perform, such representations being his ownership interest in an oil refinery, his ability to contract for and deliver foreign crude oil and his financial ability to consumate either agreement relevent hereto, with CPI or Coastal States. Thus, the primary cause of failure of the contract was the impossibility of performance by Complainant.

REASONS FOR ALLOWING THE WRIT

1. This case presents a gross abuse of discretion by the Courts below in their interpretation of the insufficient evidence argument as it relates to the wire fraud statutes. It is not consistent with the requirements of the statute and this honorable Court and, if left unturned, would literally make any civil contract controversy into a wire fraud violation, all in contravention of the clear intent of the statute.

It has been held that the wire fraud statute should be carefully and strictly construed in order to avoid extension beyond the limits originally intended by Congress. United States v Kelem, 416 F2nd 346, (9th Circ. 1969); also, U. S. v Lauderman, 576 F2nd 1383, (9th Circ. 1978), cert. den 99 S Ct 257, 439 US 896, 58 L Ed 2nd 243. Further, a conviction for wire fraud requires proof of a scheme to defraud with attendant use of wires for the purpose of executing

that scheme, U. S. v Alston, 609 F2nd 531 (D. C. Circ. 1979), with proof of intent, U. S. v Bradford, 571 F2nd 1351 (5th Circ. 1978).

Finally, good faith is an affirmative defense to charges of wire fraud. U. S. v Westbo, 576 F 2nd 285 (10th Circ. 1978).

In considering whether or not a conviction may stand under 18 USC 1343, Petitioner respectfully submits that the basic legal prerequisites of fraud must be met. The specific intent to defraud must be present, far beyond mere knowledge of shadowy dealings. U. S. v Piepgrass, 425 F2nd 194 (9th Circ. 1967), Windsor v U. S., 384 F2nd 535 (9th Circ. 1967). Also, not every breach of every fiduciary duty creates a criminal fraud.

U. S. v George, 477 F2nd 508 (7th Cir. 1973), cert. den.; Greensphan v U. S., 94 S Ct 49, 414 US 827, 38 L Ed2nd 61; Yonan v U. S., 94 S Ct 158, 414 US 827, 37 L Ed2nd 61.

Fundamentally, the very essence of fraud is that the defrauded party is misled by the party engaging in the fraud. U. S. v Clark, 546 F2nd 1130, (5th Circ. 1977).

It is apparent there are no facts in this Cause to justify a finding that a scheme to defraud, on the part of Petitioner, ever existed.

It is equally apparent the Court below placed great emphasis on: 1) the contents of the wire transfer from Petitioner stating that he would not expend the transferred funds, and; 2) that the monies received by Petitioner were immediately spent.

Such emphasis, however, is begging the question in ascertaining whether or not a scheme to defraud existed. The mere fact of the use of the funds and the attendant time frame was irrelevent. The real question is: was there a contract between Petitioner and Complainant and was the contract complied with by Petitioner. The facts and evidence show conclusively that Petitioner did comply and Complainant did not.

The overemphasis below on the fact of funds being spent constitutes an extreme abuse of discretion relating to the determination of their basic obligation: whether or not a scheme to defraud did, in fact, exist.

Furthermore, the government emphasized the conditions set out in the telegrams and the subsequent failure of

Petitioner to return the funds. This focus again avoids the real question as to whether or not the wire communications, taken in context with all other evidence created a standard of performance. The return or retention of funds is manifestly secondary to such finding.

Five (5) reputable and knowledgeable businessmen in the oil industry testified. Yet the jury based its findings largely on uncorroborated testimony of Complainant which, by his own admission, was interspersed with actual lies.

Again, the Court below obviously gave undue emphasis to Complainant's interpretation of a series of transactions in which he had a vested self interest.

Petitioner respectfully submits the facts and evidence do not show any scheme to defraud. As set out heretofore, good faith is a defense to a scheme to defraud and Petitioner submits that throughout the transactions with Complainant he accomplished each and every act he agreed to perform on behalf of Complainant and did, in fact, expend a large amount of time and expense in his behalf.

With respect to the inducement and transportation violation, it has been held the statutory requirements are fulfilled if Petitioner was a motivating force in the transportation. See: Thogmartin v United States, 313 F2nd 589 (8th Circ. 1963).

In this Cause, there is no evidence whatsoever that Petitioner was a "motivating force" for Complainant to

travel from Salt Lake City, Utah to Houston, Texas. It may be argued that such was the case with respect to Complainant's travel from Tennessee to Houston, but the indictment does not so allege. See: Stirone v United States, 361 US 212, 80 S Ct 270, 4 L Ed2nd 252 (1960).

In summary, facts do not exist to create sufficient evidence to find there was a scheme to defraud Complainant. Absent this evidence, there can be no conviction of use of the wires to further such a scheme.

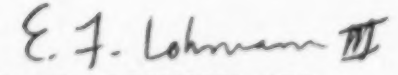
It seems a travesty on the entire judicial system to allow a Complainant in a self interest case, with no corroborating testimony and tainted by his own admissions of selective falsehoods to abuse the wire fraud

statutes, as set out here and above, and secure a criminal conviction along with a restitution order. This type of case, simply, belongs in civil court between the parties at interest.

CONCLUSION

FOR THE FOREGOING REASONS, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,



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Appendix

APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

NO. 80-2182

UNITED STATES OF AMERICA,	)
	) Appeal from
Plaintiff/Appellee,	) the United
	) States
v	) District Court
	) of Utah
WADE S. ANDREWS,	) Central Div.
	) DC: CR80-64J
Defendant/Appellant.	)

E. F. Lohmann III, Midland, TX for
Defendant/Appellant

Francis M. Wikstrom, United States
Attorney, Salt Lake City UT for
Plaintiff/Appellee

Before SETH, Chief Judge, SEYMOUR and
PECK, Circuit Judges.

SETH, Chief Judge

Defendant Wade S. Andrews was indicted on four counts of wire fraud (18 USC 1343), and one count of inducing the interstate transportation of a person in execution of a fraudulent scheme (18 USC 2314). Each wire fraud count was based on a separate transmission. The first count was based on a telex transmission from Wade Andrews in Texas to Fred Haydock in Utah on October 1, 1979. The second and fourth counts each involved a $25,000.00 wire transfer from Mr. Haydock's account to the defendant's account. The first was on October 1, 1979 and the second on October 9, 1979. The third count was based on a telex communication from Mr. Haydock to Mr. Andrews on October 9, 1979. Defendant Andrews was acquitted by the jury on one wire fraud count and convicted on the

other three. He was also convicted on the fifth count which was based on an interstate trip taken by Mr. Haydock which the indictment charged was induced by the defendant in the execution of his scheme to defraud Mr. Haydock.

Defendant was sentenced to imprisonment, probation thereafter, and ordered to make restitution of $50,000.00 as a special condition of his probation. On his appeal defendant asserts that there was insufficient evidence to support the verdict.

A brief summary of the facts is necessary. Fredrick Haydock was the president of Draycutt Corporation in Utah. Wade Andrews was a resident of Abilene, Texas and was an oil broker. Mr. Haydock met Mr. Andrews in Abilene to discuss the sale of foreign crude oil by

Draycutt Corporation. Mr. Haydock also asked Mr. Andrews if he could possibly obtain any domestic crude oil for Draycutt to purchase. Later that month the defendant called Mr. Haydock in Utah to tell him he had located 50,000 barrels of domestic crude to sell to Draycutt. The defendant further told Mr. Haydock that $50,000.00 was needed "up front". Mr. Haydock had the defendant speak with Draycutt's banker before he would agree to send the $50,000.00. Mr. Andrews spoke with the banker and represented that the money was necessary as a deposit or good faith money. Thereafter Mr. Haydock told defendant that he would not send $50,000.00 but he would send $25,000.00 if defendant sent a telegram confirming the purpose of the deposit and the terms of their agreement. On October

1, 1979 defendant sent Mr. Haydock such a telegram which in part stated: "I am working through an intermediary but will spend, or give no money out until oil and title are verified satisfactory." The telegram further assured that "[i]n the event no oil is purchased, your money will be refunded in its entirety by me." Mr. Haydock authorized the wire transfer of $25,000.00 to Mr. Andrews Abilene account. The record shows that the defendant spent the entire $25,000.00 for his personal matters by the end of the next day.

About a week later Mr. Haydock authorized the transmission of $25,000.00 more to the defendant's account at the defendant's insistence. The defendant failed to send another telex to Mr. Haydock verifying the agreement so Mr.

Haydock sen a telex to the defendant setting out the arrangement Mr. Haydock believed he had with the defendant. This telex made it clear that the $50,000 was to be used for the purchase of the 50,000 barrels of domestic crude oil only, and if the deal was not consummated the money was to be returned. The defendant again quickly spent the $25,000 for his own purposes.

Shortly thereafter Mr. Haydock left Utah on a business and personal trip. After three stops his final one was in Houston to meet with defendant and finalize the oil purchase. Instead, defendant introduced Mr. Haydock to a number of other men in the oil business. At each meeting the defendant and Mr. Haydock represented that Mr. Haydock wanted to trade foreign crude oil for

domestic oil. At one meeting Mr. Haydock signed a commission agreement entered between Draycutt and four other parties including defendant. The four parties were to get a commission if they arranged the oil trade. The defendant and Mr. Haydock further represented to the others that Mr. Haydock had a refinery in Utah, and that he could obtain Saudi crude oil through an old college roommate who was a sheik's son. No transaction was consummated while Mr. Haydock was in Houston. Before leaving Houston Mr. Haydock asked the defendant to return Draycutt's money but it was not returned.

On appeal the defendant claims that his convictions on the three counts of wire fraud were not supported by sufficient evidence. In support of this

claim defendant Andrews dwells on the evidence that Mr. Haydock made several misrepresentations in Abilene and Houston to the various oil people defendant had introduced him. Further, the defendant claims that Mr. Haydock misrepresented that he was purchasing the 50,000 barrels he sought when actually he was acting as an agent or broker for a third party.

The question when reviewing the sufficiency of the evidence "is whether 'considering the evidence in the light most favorable to the government, there is substantial evidence from which a jury might reasonably find that an accused in guilty beyond a reasonable doubt'". United States v Morris, 612 F2nd 483, 492 (10th Circ.) "The jury verdict must be upheld if there is sufficient direct and circumstantial evidence, together with

reasonably drawn inferences, to support the verdict." United States v Ramsdell, 450 F2nd 130, 133 (10th Circ.). "It is not necessary that evidence preclude every hypothesis except guilt even though the conviction may rest primarily on circumstantial evidence." United States v Yates, 470 F2nd 968,970 (10th Circ.). "Further, the circumstantial evidence required to support a verdict need not conclusively exclude every other reasonable hypothesis and it need not negative all possibilities except guilt." United States v Parnell, 581 F2nd 1374, 1379 (10th Circ.).

We must conclude that there is sufficient evidence in the record to support the three wire fraud convictions. To prove wire fraud the prosecution had to show a scheme, use of interstate

communications, and intent. "The gist of the offense is a scheme to defraud and the use of interstate communications to further that scheme." United States v O'Malley, 535 F2nd 589, 592 (10th Circ.). The government showed the necessary elements. It established that the defendant had represented to Mr. Haydock that could get, and that he had gotten the 50,000 barrels of oil for Draycutt. There was evidence that the defendant claimed to have the $50,000 when he had actually already spent the money. In the defendant's October 1, 1979 telex to Mr. Haydock he stated that he would not disburse the money except for the oil deal, and if there was no deal he would return the money. The government entered the actual interstate communiciations and drafts which set out the fraud.

Defendant's immediate disbursement for his personal interests of both the first and the second $25,000 payments wire to his account, contrary to his telex representations, and his complete failure to arrange the oil purchase for Mr. Haydock and Draycutt, are evidence of the defendant's intent to further the fraudulent scheme.

Defendant Andrews argues that counts two and four of the indictment, each dealing with the interstate transmission of $25,000 to the defendant, are legally insufficient and in fatal variance with the proof offered at trial. He bases this argument on the fact that Mr. Haydock stated on cross-examination that he was willing to pay the defendant a fair price for his services rendered as broker. Mr. Haydock admitted this could

be $5,000 to $10,000. This testimony, however, does not alter the fact that $25,000 was wire to defendant on October 1, 1979 and again on October 9, 1979 for the purchase of oil, but was in fact part of defendant's fraudulent scheme. Counts two and four are not in variance with the proof offered at the trial.

Nor can we accept defendant's argument that the evidence was at variance with count five since there was sufficient evidence presented on which the jury could conclude that Mr. Haydock went to Houston in order to consumate the purchase of 50,000 barrels of oil arranged by defendant. The fact that Mr. Haydock left Utah to go to New York, North Carolina and Tennessee before going to Houston is of no import. Mr. Haydock did travel to Houston from Utah. The

defendant and his fraudulent representations that he had secured the oil Mr. Haydock desired were the reasons Mr. Haydock went to Houston.

Defendant also urges that the trial court abused its discretion in denying his motion to transfer the case to Texas. When reviewing motions for change in venue "we are bound to give great deference to the discretion of the trial court, absent clear abuse." United States v Smaldone, 485 F2nd 1333,1345 (10th Circ.). The defendant failed to show how he was prejudiced. The witnesses the defendant desired to call were present at the trial, and the government paid their expenses. There is nothing in the record to show that the defendant did not receive a fair trial.

AFFIRMED.

APPENDIX B

MARCH TERM - April 20, 1982

Before Honorable Oliver Seth, Honorable Stephanie K. Seymour, and Honorable John W. Peck*, Circuit Judges

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff/Appellee,	)	
	)	
v	)	NO. 80-2182
	)	
WADE S. ANDREWS,	)	
	)	
Defendant/Appellant.	)	

This matter comes on for consideration of appellant's petition for rehearing filed in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied.

Howard K. Phillips
Clerk of the Court

*Of the Sixth Circuit Court of Appeals, sitting by designation.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff/Appellee,	)	
	)	Criminal
vs	)	Action
	)	No. 80-2182
WADE S. ANDREWS,	)	
	)	
Defendant/Appellant.	)	

MOTION FOR STAY AND RECALL OF MANDATE

COMES NOW the Appellant, Wade S. Andrews, by and through his attorney, and pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure and Rule 16 of this Court, and requests the Clerk of this Court to recall the Mandate in the above captioned case and stay same pending Appellant's Petition for Writ of Ceriorari to the United States Supreme Court, on the following grounds:

(1) Pursuant to Rule 36, Federal Rules of Appellate Procedure, judgment was entered in the instant case on February 8, 1982.

(2) Subsequently, a Petition for Rehearing was timely filed.

(3) On April 20, 1982, this Honorable Court entered its Order denying the Petition for Rehearing.

(4) The undersigned attorney for Appellant did not receive the Order denying the Petition for Rehearing in time to file a Motion for Stay of Mandate in a timely manner, having received same on or about April 27, 1982.

(5) Further, the copy of the judgment and mandate issued from this Honorable Court on April 28, 1982, at a time prior to the time the undersigned attorney could timely file a Motion to

Stay the same.

(6) The Appellant expects and intends to, within the time allowed, apply to the United States Supreme Court for Writ of Certiorari for review of the decision and judgment rendered in favor of the United States in the instant case.

(7) The Appellant is ready, willing and able to make a good and sufficient bond, as provided by law, for a recall and stay of the mandate in the instant case.

WHEREFORE, Appellant repsectfully requests that the Clerk of this Honorable Court grant his Motion to Recall the mandate in the above captioned and instant case, and that the Court stay said mandate pending a Petition for Writ of Ceriorari and that this Court fix the amount of bond required, if any, and that

Appellant be allowed a reasonable time in which to make and execute said bond, if the Court shall so require.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, E. F. Lohmann III, attorney for the Petitioner herein, being a member of the Bar of the Supreme Court of the United States certify that, on the 21st day of May, 1982, I served copies of the Peition for Writ of Certiorari, by mailing five (5) copies thereof in duly addressed envelopes, postage prepaid, certified mail, return receipt requested, to the Solicitor General of the United States, United States Department of Justice, Washington, D. C., said copies having been placed in the main United States Post Office, Midland, Texas, on the date aforesaid.

All parties required to be served have been served.

E. F. Lohmann III

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